



Hardship Declarations & Status of Evictions During COVID-19

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LASNNY website: <https://www.lasny.org/coronavirus-information/>

What this presentation covers:

- Legal Information vs. Legal Advice
- COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 (Evictions Only)

Other sources of tenant protections:

- **FEDERAL:** CDC Eviction Moratorium; FHA Eviction Moratorium; CARES Act
- **STATE:** Tenant Safe Harbor Act; Executive Orders (governor); Administrative Orders (court)

Legal Info vs. Legal Advice

Legal information is telling someone what the law says. Anyone can distribute legal information.

Legal advice is telling someone how the law affects their specific circumstances. Law + facts (+ opinion) = legal advice. Only someone qualified, generally an attorney, is legally allowed to give legal advice.

Legal Info vs. Legal Advice

Why does it matter?

Potential legal consequences for both person improperly giving legal advice and the person receiving that legal advice.

What facts are important? How will you prove them? Can they be proven?

Importance of developing case from beginning.

Brief Overview of Evictions in NY

There are two main types of eviction proceedings.

- **Non-payment:**

- Tenant does not pay rent
- Landlord sends a 14-day notice demanding the tenant pay the rent or leave (a *Rent Demand or Pay or Quit Notice*)
- After 14 days, if the tenant does not pay or leave, the landlord can file an eviction

- **Holdover:** Pretty much any other eviction.

- Month-to-Month Tenants (without a written lease for a term of 1 or more years): landlord does not need a reason to evict
- Breach of Lease: landlord alleges the tenant broke the lease, but must prove it
- Non-renewal: landlord does not need a reason to not renew a lease

Brief Overview of Evictions in NY

Whether the eviction is for non-payment or a holdover, two things must always be done:

1. Petitioner is required to serve a *predicate notice* that tells the tenant the reason for any potential eviction
 - Non-payments – notice is a rent demand
 - Holdovers - notice to vacate/notice of termination
2. Petitioner must serve the Notice of Petition & Petition (court papers) on the Respondent(s) 10 – 17 days before the court date.

What does “serve” mean?

“Service” is the formal delivery of court papers. This must generally be done by someone who is at least 18 years old and not a party to the court action. To prove that papers were served, generally a document called an “affidavit of service” is also filed with the court.

Note: Predicate notice CAN be served by a party.

COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020

NYS law signed by the governor on December 28, 2020

“It is . . . the intent of this legislation to avoid as many evictions and foreclosures as possible for people experiencing a financial hardship during the COVID-19 pandemic or who cannot move due to an increased risk of severe illness or death from COVID-19.”

COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020

As related to evictions, this includes:

- A 60-day stay on all evictions pending on Dec. 28 as well as any evictions filed through Jan. 27, 2021
- A Declaration of Hardship During the Covid-19 Pandemic must be provided to tenants
- Submitting the Hardship Declaration should stay eviction proceeding until at least May 1, 2021, with a limited exception

CEEFPFA of 2020: Hardship Declarations

- Declaration of hardship during Covid-19 pandemic
- Can be submitted by “tenant, lawful occupant, or other person responsible for paying rent, use and occupancy, or any other financial obligations under a lease or tenancy agreement.”
- Signed under penalty of law

CEEFPFA of 2020: Hardship Declarations

- Includes “Notice to Tenant” that explains the Declaration of Hardship
(Note: different from the Notice to Respondent Tenant required by previous administrative order)
- Once submitted, should stay eviction proceedings, both non-payment and holdover, until at least May 1, 2021 (effectively May 3)
- May be submitted “at any time,” according to the Notice to Tenant

CEEFPFA of 2020: Hardship Declarations

- Evictions include summary proceedings and “any other judicial or administrative proceeding to recover real property relating to a residential dwelling unit.”

For example, housing authority grievance hearings related to termination of tenancy.

- The form used must be the one provided by the Office of Court Administration (OCA)

CEEFPFA of 2020: Hardship Declarations

A. FINANCIAL HARDSHIP

Experiencing financial hardship

+

Unable to pay rent or other financial obligations under lease in full

OR

Unable to obtain “alternative suitable permanent housing”

Because of . . .

CEEFPFA of 2020: Hardship Declarations

A. FINANCIAL HARDSHIP (cont.)

. . . at least one of the following:

1. Significant loss of household income during COVID-19.
2. Increase in necessary out-of-pocket expenses related to essential work OR to health impacts during COVID-19.
3. Childcare or responsibilities caring for elderly, disabled, or sick family member have negatively affected ability of household to obtain meaningful employment OR earn income OR increased necessary out-of-pocket expenses.

CEEFPFA of 2020: Hardship Declarations

4. Moving expenses + difficulty securing alternative housing make it a hardship to relocate during the COVID-19 pandemic.
5. Other circumstances related to COVID-19 pandemic have negatively affected the ability to earn income/obtain meaningful employment
OR have significantly reduced household income
OR significantly increased expenses.

CEEFPFA of 2020: Hardship Declarations

B. SIGNIFICANT HEALTH RISK

- Moving during the pandemic would “pose a significant health risk”
- At least one member of household must have “an increased risk for severe illness or death from COVID-19”
 - Over the age of sixty-five
 - Has a disability or underlying medical condition
- Includes (but is not limited to) being immunocompromised

CEEFPFA of 2020: Hardship Declarations

Pre-eviction Notices

- Every rent demand or other notice required (either by lease or by law) must include:
 - A copy of the hardship declaration (in the tenant’s primary language if not English—this is the LL’s responsibility)
 - A mailing address, telephone number, and “active” email address for the tenant to return the declaration
 - A list of all nonprofit legal services organizations in the county to be compiled by OCA and updated on the OCA website

CEEFPFA of 2020: New Proceedings

- If the tenant provides a hardship declaration to the LL or agent before filing, no eviction proceeding may be started until 5/1/2021
- NOTE: time limits to commence evictions are tolled until 5/1/2021
- All new petitions/other initiating docs must include:
 - An affidavit of service for the pre-eviction notice and hardship declaration
 - A separate affidavit which states that either:
 - That the tenant has not submitted a hardship declaration OR
 - That while the tenant submitted the declaration, s/he is infringing on the use, enjoyment, or safety of others, **including a specific description of the behavior**

CEEFPFA of 2020: New Proceedings

- Whenever a new petition is filed, court must:
 - Determine whether the hardship declaration is attached to the served Notice of Petition
 - If it is not, then they must ensure that it is attached to the notice.
 - The Notice of Petition must be served personally if possible; exception is if that cannot be done with due diligence
 - Determine “at the earliest possible opportunity,” on the record or in writing, that the respondent has received a hardship declaration and has not submitted that declaration to the LL, and agent, or the court.
 - If the court finds that the tenant did not receive it, then the court shall stay the proceedings for a “reasonable time” (at least ten business days) and provide the tenant with the declaration in English and primary language if not English.
- Upon submission of the completed declaration, the tenant is entitled to a stay until at least 5/1/21

CEEFPFA of 2020: Pending Cases

- All cases pending 12/28/20 (or filed by 1/27/21) stayed for 60 days
- Courts with pending cases had to promptly issue a stay and mail the hardship declaration to the tenants
 - Hardship declaration mailed in English
 - Also in tenant's primary language "to the extent practicable"
- In a pending proceeding in which a warrant has not been issued (including those filed on/before 3/7/2020), if the tenant provides a hardship declaration to the petitioner, the court, or an agent of either, then the proceeding must be stayed to at least 5/1/2021

CEEFPFA of 2020: Post-judgment Cases

- All warrants stayed until the court has held a status conference
- If the tenant provides a hardship declaration, execution stayed until at least 5/1/2021.
 - Declaration can be provided to sheriff/marshal who cannot execute and must return declaration to the court
- Warrants already issued “shall not be effective” unless the warrant states:
 - The tenant was served with a copy of the hardship declaration, including dates served, OR
 - The tenant is ineligible for a stay because the court found s/he is persistently and unreasonably engaging in behavior that interferes with the use/enjoyment/safety of others, and must specifically describe the behavior
- Courts may not issue, and officers may not execute, warrants that do not comply
- If a court previously issued a judgment against a respondent based on objectional behavior:
 - The court must have a hearing to determine whether the tenant is still engaging in this behavior.
 - Mere allegations of this behavior are not sufficient.
 - Eviction may only proceed if the petitioner establishes that the tenant has engaged in such behavior OR has failed to submit a hardship declaration. Otherwise, tenant qualifies for a stay until 5/1/21.

CEEFFPA of 2020: Default Judgments

- No court may issue or enforce a warrant of eviction when the tenant defaults/has defaulted unless:
 - The court holds a hearing, on the petitioner's motion, *after* this legislation takes effect.
 - The petitioner or agent has filed an affidavit stating that the tenant has been served with the time, date, and place of the hearing.
- Previously issued default judgments will be removed and restored to the calendar upon the request (written or oral) of the respondent. *No orders to show cause will be required to do this.*

NYS Law: Governor's Executive Orders

- **Executive Order 202.8 (March 20, 2020):** No enforcement of any eviction for a period of 90 days (expired June 18, 2020)
- **EO 202.28 (May 7, 2020):**
 - No initiation or enforcement of evictions for tenants eligible for UI or public benefits or otherwise facing financial hardship due to COVID
 - Also prohibited late fees for the period from March 20-August 20, 2020
- **EO 202.28** also allowed tenants to use security deposit to pay rent
 - LL must enter into agreement if requested by tenant eligible for UI or public benefits or facing hardship due to COVID
 - Tenant must begin repaying the deposit within 90 days of entering the agreement and must repay deposit within 12 months of first payment.

NYS Law: Court Administrative Orders

AO/121/20, as of June 10, 2020:

- All represented parties must file and serve papers by electronic means (through NYSCEF) or by mail. If NYSCEF is not available, matters must be commenced by mail.
- If parties are not represented they must file, serve, and be served by non-electronic means unless they expressly opt to participate in NYSCEF.
- Does NOT affect essential matters, i.e. landlord lockouts, order for repairs, etc.

NYS Law: Court Administrative Orders

AO/127/20, as of June 20, 2020:

- Eviction proceedings under Article 7 of RPAPL now require ~~two~~ additional documents filed with the Notice of Petition and Petition (court papers):
 1. ~~An affidavit (or affirmation from Petitioner's attorney) that the "petition and other papers filed . . . in this matter comport with the requirements of . . . state and federal directives."~~
 2. Notice to Respondent Tenant: "DURING THE CORONAVIRUS EMERGENCY, YOU MIGHT BE ENTITLED BY LAW TO TAKE ADDITIONAL DAYS OR WEEKS TO FILE AN ANSWER TO THIS PETITION. PLEASE CONTACT YOUR ATTORNEY FOR MORE INFORMATION. IF YOU DON'T HAVE AN ATTORNEY, PLEASE VISIT www.nycourt.gov/evictions/outside-nyc FOR MORE INFORMATION."
 3. Reaffirmed in AO/160A/20

WHAT DOES ALL THAT MEAN??????

- *Tenants who can honestly complete the declaration can submit it to the court/landlord and are protected until at least May 1*
- *After January 27, courts can accept new filings but they must comply with the new law*
- *Hearings on evictions where no hardship declaration has been filed can proceed but the tenant can submit a declaration at any time*
- *If you are worried about being evicted and you are low income and want to learn about protections that may apply to you, call Legal Aid at 518-462-6765 / 1-800-462-2922 or call LASNNY's Legal Line at 833-628-0087 to speak to an attorney.*

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